

Appl. No. 09/988,777
Reply to Office Action of April 5, 2006
2880/351

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REMARKS

Applicants wish to thank Examiners Izquierdo and Barrett for the courtesies extended during the telephonic Examiner Interview on July 14, 2006. Examiner Izquierdo, Examiner Barrett, Zeba Ali and Teresa Laky participated in the interview, during which claim 1 (as amended in the Response dated January 13, 2006) and the cited reference U.S. Pat. No. 6,007,580 to Lehto et al. ("Lehto") were discussed. During the interview, Applicants requested clarification as to why Lehto was reasserted as the basis for a 35 U.S.C. § 102 reference when applicants had previously submitted arguments against Lehto in a Response dated July 19, 2005. Namely, Applicants argued that Lehto only taught a connector constructed of a patient's own tissue that penetrates a spacer rather than a connector that contacts the outer surface of a spacer. Examiner Izquierdo, Examiner Barrett and Applicants reached the agreement that amending claim 1 to clarify that the connector does not penetrate the spacer would remove Lehto as a §102 reference. No exhibits or demonstrations were shown or discussed.

Claims 1-21 and 23-39 are currently pending. Claims 12-21 and 33-37 have been withdrawn from consideration. Claim 22 has been cancelled. Claims 1 and 23 has been amended to clarify that the connector does not penetrate the outer surface of the spacer and that spacer is interposed in a joint cavity between the first and second bones. Support for these amendments is found on page 1, paragraph 8 and 9 and page 2, paragraph 19.

Rejection under 35 U.S.C. § 102

Claims 1-11 and 23-32, 38-39 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 6,007,580 to Lehto ("Lehto"). Applicants traverse this rejection because Lehto does not teach or suggest each and every element of claim 1.

Applicants submit that Lehto does not teach or suggest a connector that is constructed of autogeneous soft or fibrous tissue and that restricts the lateral movement of a spacer by contacting the outer surface of the spacer without penetrating the outer surface of the spacer as required by claim 1. When Lehto

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2880/351

mentions a fixation part being constructed of a patient's own tissue, Lehto specifically states that the fixation part penetrates the spacer:

[t]he fixation part can also be constructed of the patient's own fibrous tissue, such as cord or ligament tissue, by placing a sufficiently long part of a cord or ligament to extend from one bone to be joined to the other, in a manner that the spacer part is placed between the bones and the cord or ligament *penetrates the spacer part*.

Col. 4, ll. 42-46 (emphasis added). Therefore with regards to a connector constructed of autogeneous soft or fibrous tissue, rather than restricting lateral movement of the spacer by contacting the outer surface of the spacer without penetrating the outer surface of the spacer, Lehto's connector restricts lateral movement of the spacer by penetrating the spacer. As noted by the specification of the present application, "because the connector maintains the position of the joint spacer in the joint cavity by contacting the outer surface of the spacer, there is no need for the connector to penetrate the joint spacer, thus eliminating the risk of damage of the joint spacer or connector." Paragraph 19. As such, Applicants submit that Lehto does not anticipate the present claims and Applicants request withdrawal of this rejection.

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Conclusion

Applicants submit that the subject application is in form for allowance, and respectfully requests that such action be taken. The Examiner is invited to telephone the undersigned at the telephone number indicated below if doing so would expedite prosecution. It is believed that no fee is due for submission of this response. Should any fees be required, please charge such fees to Kenyon & Kenyon LLP Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON LLP

Dated: July 14, 2006

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